

**United States District Court**  
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 KARTHIK SUBRAMANI, ) Case No. 13-cv-01605-SC  
10 Plaintiff, )  
11 v. ) ORDER GRANTING DEFENDANT'S  
12 ) MOTION FOR SUMMARY JUDGMENT  
13 WELL'S FAGO BANK, N.A.; and )  
14 FIDELITY NATIONAL TITLE COMPANY, )  
15 Defendants. )  
16 )  
17 )  
18 )  
19 **I. INTRODUCTION**

20 Now before the Court is Defendant Wells Fargo Bank, N.A.'s  
21 ("Wells Fargo") motion for summary judgment. The motion is fully  
22 briefed,<sup>1</sup> and the Court deems it suitable for disposition without  
23 oral argument pursuant to Civil Local Rule 7-1(b). For the reasons  
24 set forth below, Defendant Wells Fargo's motion for summary  
25 judgment is GRANTED.

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28 <sup>1</sup> ECF Nos. 68 ("Mot."), 76 ("Opp'n"), 80 ("Reply").

1       **II. BACKGROUND**

2       **A. Factual Background**

3       This is a mortgage foreclosure case. Plaintiff Karthik  
4 Subramani obtained a \$479,600 mortgage loan (the "Loan") from  
5 Defendant Wells Fargo on October 18, 2006, recorded by an  
6 adjustable-rate promissory note and secured by a deed of trust  
7 ("DOT") against residential real property in Livermore, California.  
8 The DOT states that Plaintiff agreed to repay the borrowed \$479,600  
9 or risk foreclosure, and that "[t]he Note or a partial interest in  
10 the note (together with this Security Instrument) can be sold one  
11 or more times without prior notice to [Plaintiff]." Wells Fargo  
12 was the original lender under the DOT, and Fidelity National Title  
13 Insurance Company ("FNTIC") was the original trustee.

14       Plaintiff alleges that Defendant first sold the Loan to Wells  
15 Fargo Asset Securities Corporation ("WFASC") sometime around  
16 October 24, 2006. Soon after that, WFASC allegedly bundled  
17 Plaintiff's Loan (consisting of the note and DOT) with other  
18 mortgages into a mortgage-backed securities pool, the Wells Fargo  
19 Mortgaged Backed Securities 2006-AR18 Trust, Mortgage Pass-Through  
20 Certificates, Series 2006-AR18 (the "WFMBS 2006-AR18 Trust"). The  
21 WFMBS 2006-AR18 Trust had been established on October 1, 2006 with  
22 the execution of a pooling and servicing agreement ("PSA").

23       On July 23, 2009, Plaintiff received a notice of default  
24 ("NOD") from First American Title Insurance Company acting as an  
25 agent for First American Loanstar Trustee Services ("First American  
26 Loanstar") as purported "Agent for the Current Beneficiary."  
27 Compl. Ex. B ("NOD 1").

28       On August 25, 2009, First American Loanstar, acting as

1 "attorney in fact for [Defendant]," issued a Substitution of  
2 Trustee ("SOT 1"), substituting itself as trustee.

3 Plaintiff's first NOD was rescinded on September 10, 2010, but  
4 Plaintiff defaulted again, and a second NOD was recorded on May 10,  
5 2011. The second NOD was issued on May 4, 2011, by LSI Title  
6 Company acting as agent for Federal National Title Company  
7 ("FNTC"). On May 6, 2011, between the issuance and recordation of  
8 the second NOD, Defendant issued a second Substitution of Trustee  
9 ("SOT 2") appointing FNTC as substitute trustee under the DOT.  
10 Three months later, on August 11, 2011, the second SOT was  
11 recorded.

12 Plaintiff did not cure his second default, and on August 11,  
13 2011 -- the same day the second SOT was recorded -- FNTC, acting as  
14 trustee under the DOT, issued and caused recording of the Notice of  
15 Trustee Sale. A year later, on August 9, 2012, FNTC sold  
16 Plaintiff's Property in a foreclosure sale to non-party California  
17 Equity Management Group, Inc., and issued the Trustee's Deed Upon  
18 Sale ("TDUS") on August 15, 2012. Plaintiff contends that all of  
19 the legal documents described above were void because Defendant was  
20 no longer the valid lender in the DOT, or even an agent of a  
21 successor beneficiary, after it sold the Loan in 2006. According  
22 to Plaintiff, Defendant did not assign the DOT or endorse the note  
23 pursuant to the PSA. Nor did Defendant abide by California law  
24 regarding the endorsement, assignment, and recordation of notes and  
25 DOTs. Plaintiff therefore states that after Defendant sold the  
26 Loan, neither Defendant nor anyone else had any right to or  
27 interest in the Loan, so all legal notices associated with the note  
28 and DOT -- including the SOTs, NODs, and the foreclosure sale

1 itself -- are illegal and void.

2       **B. Procedural History**

3 Plaintiff has twice amended his complaint, and Defendants have  
4 twice moved to dismiss. See ECF Nos. 24 ("FAC"), 25 ("MTD FAC"),  
5 35 ("SAC"), 36 ("MTD SAC"). At this point, the Court has dismissed  
6 with prejudice Plaintiff's claims for constructive fraud, violation  
7 of the Truth in Lending Act ("TILA"), declaratory relief, and under  
8 California Civil Code section 2934(a)(1)(A). The Court also  
9 dismissed with prejudice Plaintiff's claims under the unfair and  
10 unlawful prongs of California's Unfair Competition Law ("UCL").  
11 See ECF Nos. 33 ("MTD FAC Order"), 44 ("MTD SAC Order").

12 Four causes of action remain: Plaintiff's wrongful  
13 foreclosure, cancellation of instruments, unjust enrichment, and  
14 UCL fraud claims. See MTD FAC Order at 18, MTD SAC Order at 8-9.  
15 The wrongful foreclosure, cancellation of instruments, and unjust  
16 enrichment claims are all premised on the argument that Wells Fargo  
17 sold the Loan and has no interest through which it may foreclose on  
18 Plaintiff's home. See SAC ¶¶ 77-81, 95-97, 98-100.

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20       **III. LEGAL STANDARD**

21 Entry of summary judgment is proper "if the movant shows that  
22 there is no genuine dispute as to any material fact and the movant  
23 is entitled to judgment as a matter of law." Fed. R. Civ. P.  
24 56(a). Summary judgment should be granted if the evidence would  
25 require a directed verdict for the moving party. Anderson v.  
26 Liberty Lobby, Inc., 477 U.S. 242, 251 (1986). "A moving party  
27 without the ultimate burden of persuasion at trial -- usually, but  
28 not always, a defendant -- has both the initial burden of

1 production and the ultimate burden of persuasion on a motion for  
2 summary judgment." Nissan Fire & Marine Ins. Co., Ltd. v. Fritz  
3 Cos., Inc., 210 F.3d 1099, 1102 (9th Cir. 2000).

4 "In order to carry its burden of production, the moving party  
5 must either produce evidence negating an essential element of the  
6 nonmoving party's claim or defense or show that the nonmoving party  
7 does not have enough evidence of an essential element to carry its  
8 ultimate burden of persuasion at trial." Id. "In order to carry  
9 its ultimate burden of persuasion on the motion, the moving party  
10 must persuade the court that there is no genuine issue of material  
11 fact." Id. "The evidence of the nonmovant is to be believed, and  
12 all justifiable inferences are to be drawn in his favor."  
13 Anderson, 477 U.S. at 255. However, "[t]he mere existence of a  
14 scintilla of evidence in support of the plaintiff's position will  
15 be insufficient; there must be evidence on which the jury could  
16 reasonably find for the plaintiff." Id. at 252.

17

18 **IV. DISCUSSION**

19 Plaintiff's claims all revolve around his assertion that Wells  
20 Fargo sold its interest in the Loan and therefore does not have  
21 standing to foreclose on the loan. Plaintiff makes a brief,  
22 secondary argument that the foreclosure was invalid because the  
23 second NOD named FNTC as trustee, but FNTC was not substituted as  
24 trustee until months later. The Court begins by discussing the  
25 substance of those allegations, determining that Plaintiff lacks  
26 evidence to support the first and that the second is insufficient  
27 to support any of his causes of action. Then the Court assesses  
28 the effect of those holdings on each of Plaintiff's claims.

**A. Wells Fargo's Interest in the Loan**

It is undisputed that Plaintiff initially obtained the Loan from Wells Fargo in October 2006. See SAC ¶ 10; ECF No. 69 ("RJN") Ex. A. Plaintiff alleges that "shortly after loan closing . . . [Wells Fargo] irrevocably sold the Plaintiff's mortgage loan . . . to 'Depositor' WELLS FARGO ASSET SECURITIES CORPORATION." SAC ¶ 14.

**1. Evidence That Wells Fargo Retained its Interest in the Loan**

There are, however, a number of reasons to believe that Wells Fargo did not sell its interest in the Loan at that time. In August of 2010, Plaintiff entered into a loan modification agreement with Wells Fargo. ECF No. 70 ("Grewal Decl.") Ex. C ("Subramani Depo.") at 46:8-47:18. Plaintiff claims that he entered into the modification agreement despite his belief that Wells Fargo was no longer the beneficiary of the DOT. See Subramani Depo. at 47:6-48:19. However, when Plaintiff filed a bankruptcy petition in December 2010, he listed Wells Fargo as the mortgagee on his home loan and certified that the information he provided was correct under penalty of perjury. RJN Ex. D at 14, 24.

The deed of trust, both notices of default, the rescission of declaration of default, the substitution of trustee, and notice of trustee's sale all list Wells Fargo as the beneficiary. See RJN Ex. A at 1, Ex. B at 2, Ex. C at 1, Ex. F at 2, Ex. G at 1, Ex. H at 1.<sup>2</sup> Those documents cover a period from the initiation of the

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<sup>2</sup> Plaintiff does not object to the Court taking judicial notice of these documents, but he does object to the Court's consideration of

1      Loan in October 2006 through the trustee's sale in August of 2011,  
2      and all suggest that Wells Fargo was the beneficiary of the DOT  
3      throughout that period. Wells Fargo was the only entity that ever  
4      attempted to foreclose on the loan and Plaintiff never made  
5      payments on the Loan to any other person. Subramani Depo. at 49:4-  
6      22; Grewal Decl. Ex. A at 2. Finally, Wells Fargo's Vice President  
7      of Loan Documentation has submitted a declaration stating that she  
8      has personal knowledge of Wells Fargo's records of Plaintiff's  
9      loan. See ECF No. 71 ("Mulder Decl.") ¶¶ 1-3. She states that  
10     Wells Fargo never transferred its beneficial interest in the loan  
11     nor sold Plaintiff's debt. Id. ¶ 12.

12       Plaintiff's contention is that all of the documents Wells  
13     Fargo provides are fraudulent, and he attacks Ms. Mulder's  
14     declaration for being insufficiently detailed. See Opp'n at 5-6.  
15     Neither of those contentions changes the fact that Wells Fargo has  
16     exceeded its burden (as a moving party that does not bear the  
17     burden of proof at trial) of production for this motion. Wells  
18     Fargo has submitted significant evidence that it was the  
19     beneficiary of the DOT and mortgagee on the Loan throughout the  
20     relevant time period. Absent some contradictory evidence, the  
21     Court must find that no genuine dispute of material fact exists as  
22     to whether Wells Fargo sold its interest in the loan.

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23       the truth of the matters asserted therein. Specifically, Plaintiff  
24     seems to be concerned that the Court will consider the truth of  
25     statements in these documents asserting that Wells Fargo was the  
26     true beneficiary of the DOT. The Court does not consider the truth  
27     of those statements, but it does note that every publicly recorded  
28     document regarding the Loan lists Wells Fargo as the true  
   beneficiary. While that does not conclusively prove that Wells  
   Fargo remained the true beneficiary at all times, it does evince a  
   lack of any evidence that Wells Fargo ever sold or transferred its  
   interest to someone else.

1                   **2.     Evidence that Wells Fargo Sold its Interest in the**  
2                   **Loan**

3                   The only evidence Plaintiff offers in support of his claim  
4                   that Wells Fargo transferred its beneficial interest is the expert  
5                   opinion of Lawrence Asuncion. Mr. Asuncion has a degree in  
6                   economics and was a businessman for many years. See Opp'n Ex. A  
7                   ("Asuncion Rpt.") at 3-4. He styles himself as a "forensic  
8                   mortgage loan auditor," and he is now the Chief Forensic  
9                   Securitization Audit and Mortgage Fraud Analyst for Certified  
10                  Securitization Analysis. Id. Mr. Asuncion claims "over four  
11                  thousand hours of research and study in the areas of the Truth in  
12                  Lending Act ('TILA'), the Fair Debt Collection Practices Act  
13                  ('FDCPA'), the Fair Credit Reporting Act ('FCRA'), Foreclosure  
14                  Litigation, Asset-Backed Securitization and its effects and  
15                  applications in Foreclosure and Loss Mitigation" during the past  
16                  four years. Asuncion Rpt. at 3. Mr. Asuncion does not specify how  
17                  his "research and study" was divided among the topics he lists, nor  
18                  does he provide any indication of where his study occurred or  
19                  whether it was supervised. He has "completed and certified  
20                  hundreds of Securitized Analysis Reports in residential real estate  
21                  mortgage investigation" and claims familiarity with "industry  
22                  standards, customs, practices and legal requirements of debt  
23                  instruments and mortgage loan securitizations." Id. He lists no  
24                  professional certifications or publications. Mr. Asuncion offers  
25                  an expert opinion that Wells Fargo sold the Loan to HSBC USA,  
26                  National Association shortly after it was executed. Asuncion Rpt.  
27                  at 24, 28; ECF No. 79 ("Asuncion Decl.") ¶ 3. According to Mr.  
28                  Asuncion, Wells Fargo sold Plaintiff's loan as part of a

1 securitization process that pooled a large number of mortgages  
2 together and transferred them to other entities.

3 Wells Fargo argues that Mr. Asuncion's opinion is  
4 inadmissible. Federal Rule of Evidence 702 permits an expert  
5 qualified by knowledge, skill, experience, training, or education  
6 to testify in the form of an opinion if (1) his scientific,  
7 technical, or other knowledge will be helpful to the trier of fact;  
8 (2) the testimony is based on sufficient facts or data; (3) the  
9 testimony is the product of reliable principles and methods; and  
10 (4) the expert has reliably applied the principles and methods to  
11 the facts of the case. The Supreme Court has established a two-  
12 part test for determining the admissibility of expert testimony:  
13 (1) the trial court must make a preliminary assessment of whether  
14 the reasoning or methodology underlying the testimony is  
15 scientifically valid and of whether that reasoning or methodology  
16 properly can be applied to the facts in issue; and (2) the court  
17 must ensure that the proposed expert testimony is relevant and will  
18 serve to aid the trier of fact. See United States v. Finley, 301  
19 F.3d 1000, 1008 (9th Cir. 2002) (describing the two-part step  
20 established in Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579  
21 (1993)).

22 Wells Fargo argues at the outset that Mr. Asuncion cannot be  
23 qualified as an expert under Rule 702. According to Wells Fargo,  
24 Mr. Asuncion's 4,000 hours of research and study over the past four  
25 years are insufficient to qualify him as an expert. The Court is  
26 inclined to agree; Mr. Asuncion's background does not demonstrate  
27 expertise on any matter relevant to this case. Indeed, the  
28 undersigned has previously excluded Mr. Asuncion's opinion that a

1 certain loan was securitized based on similar objections. See ECF  
2 Nos. 14-1, 27, Santos v. Bank of America, N.A., No. 3:12-cv-01538-  
3 SC (N.D. Cal. 2012). In this case, however, the clearest basis for  
4 excluding Mr. Asuncion's opinion is that it is neither based on  
5 sufficient facts and data nor was it reached using reliable  
6 methodology.

7 Mr. Asuncion's methodology, to the extent it is discernible  
8 from his report (which is rather opaque), was apparently to search  
9 through Wells Fargo's SEC filings related to a mortgage loan  
10 purchase agreement from around the time the Loan was executed. See  
11 Asuncion Rpt. at 10-11, Ex. 1 at 80-94; Asuncion Decl. at 2. Mr.  
12 Asuncion claims to have "established a match within the range and  
13 parameters of the 1,130 mortgage loans pooled under Loan Group I of  
14 the securitization trust . . ." Asuncion Rpt. at 12. Mr.  
15 Asuncion never explains exactly what that means. From his report  
16 and attached exhibits, it appears that Mr. Asuncion examined the  
17 SEC filings, which specify certain characteristics of the loans  
18 bundled in the securitization. For each characteristic, such as  
19 the origination date of the loan, the purpose of the loan, the  
20 interest rate, the maximum interest rate, the date to the first  
21 adjustment, and the size of the loan, Mr. Asuncion found some  
22 number of loans with the same characteristics as the Loan at issue  
23 in this case. In other words, Mr. Asuncion has found that, in  
24 2006, Wells Fargo securitized some number of loans with similar  
25 characteristics to the Loan at issue here.

26 There a number of rather obvious problems with this approach.  
27 The first is that it does not necessarily tell us anything about  
28 Plaintiff's loan at all. The fact that Wells Fargo securitized a

1 number of loans, some of which shared certain characteristics with  
2 Plaintiff's, around the time that Plaintiff's loan was executed  
3 does not mean that Plaintiff's loan was securitized. Second, it is  
4 unclear how Mr. Asuncion selected the certain loan pooling  
5 agreement he examined. Third, Plaintiff provides no support  
6 whatsoever for his inference that Plaintiff's loan must have been  
7 one of the loans with similar characteristics that was included in  
8 the securitization agreement. Plaintiff's search results  
9 themselves demonstrate that multiple loans match each of his search  
10 criteria. Fourth, it is unclear from the report that Plaintiff's  
11 data permits him to determine whether multiple parameters apply to  
12 the same loan or loans. For example, Mr. Asuncion's data appear to  
13 reveal that Group I included 45 loans with 360 months remaining to  
14 maturity, and 193 loans with original principal balances in the  
15 range of \$450,001 to \$500,000 (both of which "matched" Plaintiff's  
16 loan). But Mr. Asuncion's report does not demonstrate whether or  
17 how he determined how many loans both had 360 months to maturity  
18 and an original principal balance in that range. There is simply  
19 no explanation for his conclusion that Plaintiff's loans must have  
20 been one of the similar loans securitized in 2006. In fact, from  
21 the data in the report alone, there does not appear to be any  
22 conclusive evidence that any of the loans included in the  
23 securitization agreement matched Plaintiff's loan for all  
24 parameters. Even if Mr. Asuncion had such information, he never  
25 provides support for his assumption that one of the loans with  
26 matching parameters was Plaintiff's loan.

27 The best way to phrase Mr. Asuncion's findings is this: he  
28 discovered that Wells Fargo securitized a large number of loans in

1 2006, many of which shared certain characteristics with Plaintiff's  
2 loan. That fact simply does not support a conclusion that Wells  
3 Fargo securitized Plaintiff's loan, much less a conclusion that  
4 Wells Fargo sacrificed any beneficial interest in the Loan.

5 Accordingly, the Court SUSTAINS Wells Fargo's objection to Mr.  
6 Asuncion's opinion. The Court finds that Mr. Asuncion's opinion is  
7 neither reached through reliable methodology nor based on  
8 sufficient facts and data. Searching the records of a  
9 securitization agreement for loans with similar characteristics is  
10 not a reliable method of determining whether any particular given  
11 loan was sold as part of that agreement.<sup>3</sup>

12 **3. Conclusion**

13 The Court finds that Wells Fargo has met both its burden of  
14 production and burden of persuasion on this issue. It is  
15 undisputed that Wells Fargo was the initial mortgagee, and Wells  
16 Fargo has provided sufficient evidence suggesting that it never  
17 transferred its beneficiary interest in the Loan. Plaintiff, who  
18 would bear the burden of proof at trial, has no evidence at all  
19 that Wells Fargo ever transferred the Loan. As a result, the Court  
20 finds that there is no genuine issue of material fact: Wells Fargo  
21 retained its beneficial interest in the Loan and DOT through the  
22 foreclosure sale.

23 **B. Substitution of Trustee**

24 Wells Fargo substituted Fidelity National Title Company

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26 <sup>3</sup> That is not to say that such data combined with other information  
27 might support a conclusion like the one Mr. Asuncion offers. But  
28 standing alone, Mr. Asuncion's data is insufficient to support his  
conclusion. And "matching parameters," standing alone, is an  
unreliable methodology.

1 ("FNTC") as the trustee under the deed of trust (for First American  
2 LoanStar Trustee Services, LLC) on August 11, 2011. See RJD Ex. G.  
3 However, the second notice of default was executed on May 4, 2011  
4 (and recorded on May 10) and specified FNTC as the trustee.  
5 Plaintiff argues that, the second notice of default "is fraudulent,  
6 null and void" because it preceded the substitution of trustee.  
7 Opp'n at 13-14. Plaintiff argues that the second notice of default  
8 was executed by, and the ensuing foreclosure sale was conducted by,  
9 a trustee that was not duly substituted. See Opp'n at 9-10.

10 The California Court of Appeal has already addressed this  
11 issue. In Ram v. OneWest Bank, FSB, the court faced a scenario in  
12 which a notice of default identified Aztec Foreclosure Corporation  
13 ("Aztec") as the trustee. 183 Cal. Rptr. 3d 638, 641 (Cal. Ct.  
14 App. 2015). However, the beneficiary did not execute a  
15 substitution of trustee to name Aztec as the trustee until several  
16 weeks later. Id. The court held that the beneficiary had  
17 "complied with the procedure authorized by the Legislature" and  
18 that the "supposed defect" could not "form the basis for rendering  
19 the ensuing trustee's sale not just voidable, but absolutely void."  
20 Id. at 646.<sup>4</sup>

21 <sup>4</sup> Both Wells Fargo and the California Court of Appeal cite  
22 California Civil Code Section 2934a(c) as the basis for this  
23 conclusion. See Ram, 183 Cal. Rptr. 3d at 645; Reply at 5. All  
24 that section says, however, is that it is permissible for a  
25 beneficiary to effect substitution of a trustee after a notice of  
26 default is recorded but before a notice of sale is recorded, so  
27 long as the beneficiary provides proper notice of the substitution.  
28 The statute does not explicitly permit a beneficiary to name as  
trustee on a notice of default an entity that is not the trustee of  
record but will be substituted in the future. That is, the statute  
never says that it is okay for a beneficiary to name the wrong  
trustee on a notice of default. And it seems unlikely that  
California legislature intended to permit that when it passed the  
law. Rather, the statute was probably passed to address

Moreover, the Ram court made clear that even if prematurely naming an incorrect trustee did constitute a procedural irregularity, it would be unlikely to cause prejudice. "The primary purpose of a notice of default is to provide notice of the amount in arrears and an opportunity to cure the default. In order for a defect in the notice of default to be material, it must cause prejudice." Id. at 649 (internal citations omitted). Plaintiff has not identified any reason that naming FNTC as the trustee before FNTC was duly substituted as the trustee caused him any prejudice at all. Ram is directly on point: the fact that FNTC was not substituted as trustee until after the notice of default was recorded cannot serve as basis for Mr. Subramani's challenge to the foreclosure. "[T]he recorded substitution of trustee constituted conclusive evidence that [FNTC] had the authority to conduct the trustee's sale and to convey title to [Mr. Subramani's] home to the highest bidder, even if the notice of default was improperly signed and recorded by [FNTC] before it became trustee." See id. at 647.

**C. Mr. Subramani's Claims**

**1. Wrongful Foreclosure**

The elements or a wrongful foreclosure claim are: "(1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale . . .

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specifically the situation it describes: substitution of a trustee after a notice of default issues (presumably specifying the correct trustee of record at the time) but before recording a notice of sale. This difference of opinion regarding the interpretation of Section 2934a, however, does not affect the outcome in this case because Mr. Subramani cannot show that he was prejudiced by Wells Fargo's failure to name the correct trustee of record.

1 was prejudiced or harmed; and (3) in cases where the trustor or  
2 mortgagor challenges the sale, the trustor or mortgagor tendered  
3 the amount of the secured indebtedness or was excused from  
4 tendering." Lona v. Citibank, N.A., 134 Cal. Rptr. 3d 622, 633  
5 (Cal. Ct. App. 2011). Plaintiff alleges that the foreclosure sale  
6 in this case was illegal and fraudulent because Wells Fargo lacked  
7 the authority to foreclose on the property. According to  
8 Plaintiff, Wells Fargo's lack of authority stems from the alleged  
9 transfer of its beneficial interest in the Loan to a "true unknown  
10 beneficiary." See SAC ¶¶ 77-81. Because the Court finds that  
11 there is no evidence that Wells Fargo ever transferred its  
12 beneficial interest in the Loan, Plaintiff has no evidence of the  
13 first element of this claim. Thus, there is no genuine dispute of  
14 material fact as to whether the foreclosure was illegal,  
15 fraudulent, or willfully oppressive. Wells Fargo's motion is  
16 GRANTED as to the wrongful foreclosure claim.

17       **2. Cancellation of Instruments**

18       California Civil Code Section 3412 permits cancellation of  
19 "[a] written instrument, in respect to which there is a reasonable  
20 apprehension that if left outstanding it may cause serious injury  
21 to a person against whom it is void or voidable." Once again, this  
22 claim is premised on Plaintiff's assumption that Wells Fargo  
23 transferred its beneficial interest in the Loan. See SAC ¶¶ 95-96.  
24 Plaintiff's legal theory is that the deed of trust and foreclosure  
25 documents are void "as a result of the bungled securitization and  
26 the Defendants acting without any legal standing and authority from  
27 the unknown beneficiary . . ." Id. ¶ 95. Because Plaintiff has  
28 no evidence that the "bungled securitization" ever occurred, he

1 cannot show that a genuine dispute as to a material fact exists.  
2 This claim, too, must fail. Wells Fargo's motion for summary  
3 judgment is GRANTED as to the cancellation of instruments cause of  
4 action.

5           **3. Unjust Enrichment**

6        "The elements of an unjust enrichment claim are the 'receipt  
7 of a benefit and [the] unjust retention of the benefit at the  
8 expense of another.'" Peterson v. Cellco P'ship, 164 Cal. App. 4th  
9 1583, 1593 (Cal. Ct. App. 2008). Plaintiff alleges that Wells  
10 Fargo unjustly retained his mortgage payments. The basis for that  
11 claim is, again, that Wells Fargo "collected mortgage payments from  
12 the Plaintiff for years after it sold the loan." Opp'n at 14.  
13 Because there is no evidence that Wells Fargo ever sold the Loan,  
14 Wells Fargo's motion for summary judgment is GRANTED as to this  
15 claim as well.

16           **4. UCL Fraud**

17 Plaintiff's UCL fraud claim includes a litany of Defendants'  
18 allegedly fraudulent practices. See id. ¶ 109. Strangely, the  
19 operative complaint alleges that Wells Fargo perpetrated these  
20 fraudulent practices, causing "substantial harm to California  
21 consumers." Id. ¶ 112. It is, therefore, unclear whether  
22 Plaintiff alleges that Wells Fargo perpetrated all of these  
23 practices against him. Many of the claims are not adequately  
24 supported by factual allegations in the complaint. It is clear  
25 that, at least to some extent, Plaintiff's UCL claim is based on  
26 the same alleged sale of the Loan as his other claims. Some of the  
27 behavior he cites includes "[e]xecuting and recording false and  
28 misleading documents; and . . . [a]cting as beneficiaries and

1 trustees without the legal authority to do so." Id. ¶ 109. In his  
2 opposition brief, Plaintiff clarifies that "[t]he basis of  
3 Plaintiff's claim is that Wells Fargo fraudulently continues to  
4 assert rights under Plaintiff's note and deed of trust  
5 notwithstanding the fact that it sold the mortgage loan in 2006."  
6 Opp'n at 14-15. Because that is the basis of Plaintiff's UCL  
7 claim, and because the Court has determined that Plaintiff has no  
8 evidence that the Loan was sold in 2006, the Court finds that  
9 summary judgment is warranted on this claim as well. Wells Fargo's  
10 motion is GRANTED as to Plaintiff's UCL claim.

11

12 **V. CONCLUSION**

13 For the reasons set forth above, Defendant Wells Fargo's  
14 motion for summary judgment is GRANTED with respect to all of  
15 Plaintiff Karthik Subramani's remaining causes of action.  
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IT IS SO ORDERED.

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Dated: March 13, 2015



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UNITED STATES DISTRICT JUDGE

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